train by offering another. We think it plain that this order was applied in a way that was beyond the power of the commission and courts of the State (Seaboard Air Line R'y *v.* Blackwell, 244 U. S. 310, 37 Sup. Ct. 640, 61 L. Ed. 1160; Chicago, Burlington & Quincy R. R. *v.* Railroad Comm'n of Wisconsin, 237 U. S. 220, 226, 35 Sup. Ct. 560, 59 L. Ed. 926; South Covington & Cincinnati St. R'y *v.* Covington, 235 U. S. 537, 548, 35 Sup. Ct. 158, 59 L. Ed. 530, L. R. A., 1915F, 792.)"

Negligence—Care of Premises—Invitees.—In Leighton *v.* Dean, 102 Atl. 565, in the Supreme Judicial Court of Maine, it appeared that plaintiff, a pedestrian, while waiting for a street car stood upon a three-foot strip of sidewalk joining the pavement, but on private property, and was inspecting a display in a shop window when she was injured by the falling of an awning over the window. The strip of sidewalk did not present any different appearance from the rest of the pavement. It was held that plaintiff was on the three-foot strip as a licensee by the invitation of defendant, the owner of the shop, who owed to her the duty to see that the premises were in a reasonably safe condition. The court said in part:

"The defendant contends that the plaintiff was, at most, a mere passive licensee to whom he owed no duty except not to do wanton injury (McClain *v.* Caribou Nat. Bank, 100 Me. 437, 62 Atl. 144). With this we cannot agree. The window displays by abutting retail salesmen are among the most common and effective methods of advertising. They challenge the attention of the public and invite and induce closer inspection of the dealer's wares. It is not expected that all who stop to gaze should become immediate purchasers, but all are invited that some may be persuaded. We hold, therefore, that the plaintiff was upon the three-foot strip as a licensee by the express or implied invitation and allurement of the defendant, and that he consequently owed to her the duty to see that his premises were in a reasonably safe condition (Moore *v.* Stetson, 96 Me. 203, 52 Atl. 767; Patten *v.* Bartlett, 111 Me. 409, 89 Atl. 375, 49 L. R. A., N. S., 1120; Bennett *v.* Railroad Co., 102 U. S. 577, 26 L. Ed. 235).

"The strip, being so surfaced and finished that to all intents and purposes it was a part of the street intended for foot passengers, extended to the public an implied invitation to use it as such (Holmes *v.* Drew, 151 Mass. 578, 25 N. E. 22; Sweeney *v.* Old Colony R. R., 10 Allen, Mass. 368, 87 Am. Dec. 644).

"In Holmes *v.* Drew the plaintiff was injured by defect in what she believed was a part of the sidewalk, but which was in fact private land of the defendant abutting thereon. The court says the jury might have inferred from the facts stated that the defendant laid out and paved the sidewalk on her own land in order that it should be

used by the public as a sidewalk or street and allowed it to remain apparently a part of the street that was intended to be used by foot passengers.

" 'This would amount to an invitation to the public to enter upon and use as a public sidewalk the land so prepared, and the plaintiff so using it would have gone upon the defendant's land by her implied invitation, and she would owe to him the duty not to expose him to a dangerous condition of the walk which reasonable care on her part would have prevented. * * * The ground of the defendant's liability is not her obligation to keep a way in repair; but her obligation (is) to use due care that her land should be reasonably safe for the use which she invited the plaintiff to make of it.'

"In Sweeney *v.* Old Colony Railway the plaintiff was using for his own purpose a private crossing over the tracks of the defendant. The defendant's flagman indicated to the plaintiff that the way was open to passage and he was injured when responding to such notice. The court held that though he was not upon the defendant's property for the purpose of transacting business with it, but solely for his own purposes, he was nevertheless an invited licensee, and therefore the defendant was liable.

"Chenery *v.* Fitchburg Railroad (160 Mass. 214, 35 N. E. 554, 22 L. R. A. 575): 'The test is whether an intelligent and prudent person would understand there was an invitation to use private land as a public way.'

"Binks *v.* South Yorkshire Railway (32 Law J., N. S., Q. B., 26): 'There might be a case where permission to use land as a path may amount to such an inducement as to lead the persons using it to suppose it a highway, and thus induced them to use it as such.'

"Davis *v.* Central Cong. Society (129 Mass. 367, 37 Am. Rep. 368): 'It makes no difference that no pecuniary profit or other benefit was received or expected. * * * The fact that the plaintiff came by invitation is enough to impose upon the defendant the duty which lies at the foundation of this liability, and that * * * the defendant in giving the invitation was actuated only by motives of friendship and Christian charity.'

"Bennett *v.* Railroad Company (102 U. S. 585, 26 L. Ed. 235): 'The public were invited to use the premises for the purpose to which it had been appropriated by the defendant. "It was therefore" the defendant's duty "to take such precautions from time to time as ordinary care and prudence would suggest to be necessary for the safety of those who had occasion to use the premises for the purposes for which they had been appropriated by the company, and for which, with its knowledge and permission, it was commonly used by the public.' "

"In the case at bar the plaintiff was upon the strip as an invited

licensee of the defendant, although neither she nor her companion had any intention of entering the defendant's store or transacting business with him.

"Neither can it be said that she forfeited her rights as such licensee by lingering on said strip while waiting for a car. The easement of the public on highways is not restricted to such narrow limitation. One does not become a trespasser or forfeit rights in the street as a traveler by stopping to converse with a friend while waiting for a car or any other harmless purpose. The mere fact that waiting accommodation was provided by the street railway for the convenience of its patrons would not deprive of their rights the large number of patrons who prefer the fresh air on the sidewalk."

Evidence—Parol Evidence—Contemporaneous Collateral Agreement.—In Armstrong *v.* Cavanagh (Iowa), 166 N. W. 673, it was held that in an action for rent of an apartment, defendant seeking to offset damages to his automobile from freezing of the water in its radiator, where the written lease was complete only in so far as it related to the apartment and did not include the garage, as to which it merely stated, "An extra charge of $5 per month without heat and $7.50 per month, with heat, per car in the garage," defendant's testimony as to an alleged oral lease of the garage to him, etc., was not inadmissible as varying a writing.

"Was this evidence improperly excluded by the court? Manifestly, upon defendant's theory, the written contract did not contain the full agreement of the parties. It was complete in so far as it related to the apartment, but did not purport to include the garage. The oral contract alleged by defendant did not tend to alter, vary, or contradict a word or sentence of the written instrument, but related wholly to a matter concerning which the written instrument was silent, except for the clause quoted above. Parol evidence of a contemporaneous, collateral agreement not purporting to be included in the written agreement is not inadmissible upon the theory that it tends to vary, alter, or contradict the terms of the written instrument for the reason that it does not do so. The written lease referred to an apartment, the alleged oral agreement to a garage, and the two were wholly separate and distinct in their terms and character. The evidence offered by the defendant of the alleged oral contract should have been received, and it was error for the court to exclude the same (Hall *v.* Barnard, 138 Iowa 523, 116 N. W. 604; Ingram *v.* Dailey, 123 Iowa 188, 98 N. W. 627; Peterson *v.* C., R. I. & P. R'y, 80 Iowa 92, 45 N. W. 573; Murdy *v.* Skyles, 101 Iowa 549, 70 N. W. 714, 63 Am. St. Rep. 411; Sutton *v.* Griebel, 118 Iowa 78, 91 N. W. 825; Anderson *v.* Thero, 139 Iowa 632, 118 N. W. 47; Horner *v.* Maxwell, 171 Iowa 660, 153 N. W. 331; Witthauer *v.* Wheeler,